IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06/10/2004

Coram

The Honourable Mr. Justice V. KANAGARAJ
and
The Honourable Mr. Justice T.V. MASILAMANI

C.A. No.123 of 2002

Desingu @ Kaveri .. Appellant

-vs-

State by Inspector of Police,
Tiruchengodu Police Station,
Salem District.
(Crime No.265/2000) .. Respondent

Criminal Appeal against the judgment made in S.C.No.198 of 2001 dated 29.11.2001 on the file of the I Additional Sessions Judge-cumChief Judicial Magistrate, Salem.

!For Appellant : Mr.C.D.Johnson

^For Respondent : Mr.E.Raja,
Addl. Public Prosecutor.

:JUDGMENT

(The judgment of the Court was delivered
by T.V. MASILAMANI, J.)

The appellant was the accused before the I Additional District Judge-cum-Chief Judicial Magistrate, Salem convicted and sentenced under Section 302 I.P.C. to undergo imprisonment for life and also to pay a fine of Rs.1,000/-, in default to undergo R.I. for 3 months in S.C. No.198 of 2001 and that judgment dated 29.11.2001 which is under challenge in this appeal.

2. The appellant herein is referred to hereunder as the accused for the sake of convenience. The accused and deceased are husband and wife residing at Arunthiar Street in Ranganoor and the accused was reprimanding his wife Chinnammal about her illicit intimacy with one Palani living in the same street. Further the accused was suffering from illness for the last 3 months prior to the occurrence, in spite of treatment by the doctors and therefore he

entertained a suspicion that his wife Chinnammal (since deceased) had in

collusion with her paramour Palani indulged in some black magic which resulted in his illness.

3. While so, he along with his wife Chinnammal went to Kaliamman temple at Konnakkadu for performing pooja in order to cure his illness and had overstayed during that night after performing pooja to ward off the ill effects suffered by him at the hands of his wife. While so, when they were sleeping during the night on 22/23.7.2000 in the front yard of the residence of the poojari, Sengoda Nadar, at about 1.00 A.M. in the early hours, the accused took the aruval kept in the pooja room and cut on the neck of his wife Chinnmmal indiscriminately and caused her death and thereby he was charged for the offence punishable under Section 302 I.P.C.

4. Since the accused denied the charge framed against him, the prosecution examined 11 witnesses and marked 13 documents and also produced 14 material objects during trial before the learned Sessions Judge in order to bring home the guilt of the accused.

5. The substance of the prosecution case as discerned from the evidence may be set out briefly hereunder:-

(a) P.W.1 Sengoda Nadar is residing at Konnakadu, Karuveppampatti village and he is doing pooja to the deity Kaliamman in his residence itself. He used to cure the ill-effects of black magic suffered by the worshippers besides sooth-saying, providing talisman, etc., to them to ward off the ill effects of such black magic. P.W.4 who is living nearby the occurrence place used to assist P.W.1 while performing poojas and other ceremonies to the deity to ward off the ill effects of black magic, etc., suffered by the worshippers.

(b) The accused entertained a suspicion about the fidelity of his wife Chinnammal (since deceased) that she had illicit intimacy with one Palani who is living in the same street where both of them were residing permanently. Similarly, since he suffered illness, he suspected that his wife and the said Palani would have hatched up some black magic against him so as to make him unhealthy and therefore he used to visit occasionally the temple at P.W.1's residence for worship for about one year prior to the occurrence and on the date of occurrence, he brought his wife Chinnammal also along with him.

(c) P.W.3 is the wife of P.W.1 who had witnessed the occurrence. P.W.2 one of the worshippers who had also been present on the date of occurrence along with other people including the accused and the deceased at the place of occurrence.

(d) According to P.Ws.1 to 4, they witnessed the occurrence when the accused had cut his wife with aruval kept in the pooja room of P.W.1 at about 1.00 A.M. in the early hours on 22/23.7.2000 and immediately thereafter, the accused ran away from the place of occurrence after leaving the weapon. P.W.1 went to the police station at Thiruchengode at 3.30 A.M. and gave the complaint, Ex.P-1 to P.W.11 Inspector of Police, who registered

the crime in Cr.No.265/2000 under Section 30 2 I.P.C. and prepared the F.I.R., Ex.P-11 and sent the complaint as well as the printed F.I.R. to the Judicial Magistrate.

(e) P.W.11 went to the place of occurrence at 6.00 A.M. on the same day and prepared the observation mahazar, Ex.P-2 in the presence of P.W.5 and another witness and also drew the rough sketch, Ex.P-12.

(f) Further, P.W.11 conducted inquest on the dead body of Chinnammal at the place of occurrence in the presence of panchayatdars and prepared the inquest report, Ex.P-13 and thereafter he examined witnesses P.Ws.1 to 4 and others and recorded their statements. He despatched the dead body to the Government Hospital, Thiruchengode for postmortem through P.W.9, Head Constable along with his requisition, Ex.P-4 .

(g) On receipt of the said requisition, Ex.P-4 along with the dead body, P.W.8 Autopsy Surgeon conducted the post-mortem at 2.30 P.M. on 23.7.2000 on the dead body and found the following injuries:-

"External Injuries:
1. An incised cut wound of the size of 8 cm x 6 cm x 3 cm extending from the ight side of neck from the back of right sternocleidomastoid muscle to the front of thyroid cartilage.
2. An incised wound of the size of 5 cm x 2 cm x 3 cm over the right upper neck 4 cms beow the jawbone severing right upper sternocleidomastoid muscle.

Internal Examination:
On dissection of injury No.1 as above, dimensions of the wound confirmed. Right carotid artery and Jugular vein cut completely. All the superficial and deep cervical muscles severed. Larynx remained cut. On

dissection of front of neck, upper trachea is severed and blood clots seen occluding the cut end of the trachea. The injury is fatal. Hyoid bone intact."

He has issued the post-mortem certificate, Ex.P-5 and opined that the deceased would appear to have died 12 to 18 hours prior to autopsy due to shock and heamorrhage due to injury to the vital organs in the neck.

(h) After completion of post-mortem, P.W.9, Head Constable seized M.Os.6 to 12 from the body of the deceased and handed over the same to P.W.11 who forwarded the same to the Court under Form No.95.

(i) On 23.7.2000 itself at 2.00 P.M., P.W.11 arrested the accused in the bus stand near Devanankurichi and obtained his voluntary confession in the presence of P.W.6 and another witness and also recovered M.O.13 blood stained dhoti and M.O.14 shirt from the accused and forwarded the same to the Court.

(j) On 24.7.2000, P.W.11 examined P.W.5 and other witnesses

and recorded their statements. On 25.7.2000, P.W.9 and other witnesses were examined and their statements obtained by P.W.11. On 31.7.2000, he gave the requisition Ex.P-6 to the Court to forward the material objects to the Chemical Examiner. Ex.P-7 is the requisition sent by the Court along with the material objects and Exs.P-8 to P-10, the reports from the Chemical Examiner and the Serologist. After completing the investigation, P.W.1 laid the final report against the accused on 7.9.2000 under Section 302 I.P.C.

6. When the accused was questioned with reference to the incriminating circumstances as seen from the evidence adduced by the prosecution, he denied the same and he has not adduced any evidence either oral or documentary on his side.

7. The learned Sessions Judge having analysed the evidence, both oral and documentary, adduced by the prosecution found the accused guilty for the offence under Section 302 I.P.C. and convicted him to undergo imprisonment for life and also to pay a fine of Rs.1,000/-, in default to undergo R.I. for 3 months.

8. Mr.C.D.Johnson, the learned counsel appearing for the accused has argued at the outset that the very complaint Ex.P-1 given by P.W.1 is doubtful and the other witnesses P.Ws.3 and 4, who turned hostile were not helpful to the prosecution in any manner. Similarly, he would contend that the trial Court ought to have held that the prosecution has not established the recovery of M.O.1, weapon in this case and that the medical evidence did not corroborate the ocular evidence given by P.W.1. According to him, the learned Sessions Judge failed to appreciate that the prosecution has not established the motive alleged for the crime and therefore he would urge that the defence version is more probable than that of the prosecution. Further, he has submitted that the trial Court failed to observe that the there was no light at the scene of occurrence so as to enable the witnesses to see the incident. Similarly, he has also contended that the contradictory version in the evidence adduced by the prosecution with reference to the presence of the accused at the scene of occurrence immediately after the incident as well as at the time of his arrest would probablise the defence version and therefore he has urged that the judgment of conviction and sentence rendered by the trial Court has to be set aside by allowing the appeal.

9. In the above circumstances, it has become necessary to consider whether the prosecution has succeeded in brining home the guilt of the accused beyond reasonable doubt.

10. The relationship of the accused and the deceased as husband and wife is not in controversy. Similarly, the fact that P.W.1 Sengoda Nadar is a poojari by profession and is performing pooja to the deity of Kaliamman in his residence situate at Konnakkadu in Karuveppampatti village is not disputed.

11. The medical evidence of P.W.8, Autopsy Surgeon and the postmortem certificate, Ex.P-5 would lend support to the evidence of eyewitnesses in this case. The categorical opinion offered by P.W.8 is that the injuries found on the neck of the deceased could have been caused by any sharp edged weapon like

M.O.1 aruval and that the external injury No.1 and the corresponding internal injury would be sufficient in the normal course of events to cause imminent death. Even in the cross-examination of P.W.8, nothing has been elicited on behalf of the accused to nullify the effect of his evidence and therefore we are constrained to render a finding that the deceased died on account of homicidal injuries, as has been rightly held by the Court below.

12. The first contention of the learned counsel for the appellant is that the motive alleged by the prosecution has not been established in this case and he has drawn our attention to the evidence on record to show that none of the witnesses examined by the prosecution has spoken to about the alleged illicit intimacy between the deceased Chinnammal and Palani. It is therefore submitted by him that the very basis of the prosecution case falls to the ground.

13. Per contra, the learned Additional Public Prosecutor would draw our attention to the evidence of P.W.1 and the complaint, Ex.P-1 to fortify his contention that when the accused and the deceased came to P.W.1 for curing the illness of the accused by performing pooja at about 1.00 P.M. on 21.7.2000, the accused represented that he was suffering from illness on account of the black magic perpetrated by his wife and her paramour Palani and on account of the same, he requested him to cure the illness of by doing poojas. Hence, the learned Additional Public Prosecutor has in our opinion rightly contended that even though the said Palani, who has been cited as witness, has not been examined, the basis of the prosecution case has been fairly established by the evidence of P.W.1 and the complaint Ex.P-1.

14. In view of the totality of the evidence on this aspect of the matter, we are of the considered view that the purpose for which the accused and the deceased came to P.W.1 has been clearly proved by positive evidence. It is in these circumstances that we are unable to accept the first contention put forth by the learned counsel for the accused that the prosecution has failed to establish the motive for the commission of the crime.

15. The learned counsel for the accused has argued that the accused filed his written statement at the time of questioning under Section 313 Cr.P.C. to the effect that he had not committed the offence and therefore he has urged that in view of such denial of the charge, it is incumbent upon the prosecution to establish by adducing clinching evidence to prove the presence of the accused at the place of occurrence on that date and also to establish the subsequent process of investigation whereby the prosecution let in evidence both oral and documentary to bring home the guilt of the accused. In this respect, he would draw our attention that the independent evidence sought to be adduced through P.W.4 becomes unreliable for the reason that he would admit in the cross examination that he did not see as to who caused the fatal injury to the deceased as he was in sound sleep before waking up and that he was told that the accused had cut his wife and caused the fatal injury.

16. However, the learned Additional Public Prosecutor has pointed out that a fair reading of the entire evidence of P.W.1 would indicate that as soon as he woke up on hearing the noise, he saw the accused inflicting cut

injury on the neck of his wife and ran away from the scene of occurrence. He has however contended that the snap answer in the cross-examination that subsequently the people were saying that the accused was running after inflicting fatal injury to his wife cannot in any way alter the effect of his earlier evidence. In view of such evidence of P.W.4, we are of the opinion that overall effect of the same would indicate that he was present at the place of occurrence, as he used to assist P.W.1 in performing poojas and therefore there was every occasion for him to witness the occurrence.

17. Similarly, the testimony of P.W.4 is that on the occurrence day, poojas were performed upto 12.00 in the mid night and at about 1.00 A.M. in the early hours, he heard the noise of cut with a weapon and thereupon all the persons who are sleeping e woke up on hearing the hue and cry. Further, his categorical evidence is also to the effect that there was electric light available at the scene of occurrence so as to enable him to see the incident and such evidence finds corroboration in Ex.P-2, observation mahazar as well as the testimony of P.W.11, the investigating officer. There is no reason why the above evidence cannot be relied upon by this Court. Hence, we have no option except to hold that the contention of the learned counsel for the appellant in this respect is not acceptable.

18. The next argument put forth on behalf of the appellant is that while P.W.1 would contend that the accused was present at 9.00 A.M. at the scene of occurrence on 23.7.2000 and also accompanied P.W.1 and police officers to the police station, the evidence of P.W.11 that he arrested him at 2.00 P.M. near the bus stand at Devanankurichi in the presence of P.W.6 and another witness cannot be true and therefore he has urged that the prosecution case has to fail on this ground alone. It is however necessary to note that even according to the evidence of P.W.2, P.W.3 and P.W.4 the accused ran away from the occurrence place immediately after inflicting the fatal injuries on his wife and thereafter P.W.1 went to the police station and gave the complaint which set the ball on motion.

19. It is in the evidence that the police Inspector P.W.11 came to the place of occurrence at 6.00 A.M. and he was continuing the investigation upto 10.30 A.M. at the place of occurrence on 23.7.2000. In this context, the evidence of P.W.6, the Village Administrative Officer who attested in the mahazar, Ex.P-2 for recovery of material objects like aruval, blood stained cement flooring and sample cement flooring, would indicate that P.W.11 was present at the place of occurrence at 6.00 A.M. and that he was continuing the investigation and in the middle after signing the mahazar, he had gone away from the place.

20. As has been rightly pointed out by the learned Additional Public Prosecutor, P.W.3, wife of P.W.1 would contend in her evidence that after lodging the complaint her husband P.W.1 came to the occurrence place along with the police officers and the son of the accused and that after completing the investigation at the place of occurrence, all of them left by 1.00 P.M. along with the dead body of the deceased. In view of such evidence, we are of

the considered view that P.W.1, instead of mentioning about the presence of the son of the accused during that time, wrongly stated that the acc used was present when P.W.11 came to the place of occurrence to commence the investigation. It also stands to reason as admittedly the accused who had fled away from the occurrence place could not have come again along with the police officers and it is in these circumstances that we arrive at the conclusion that the answer obtained from P.W.1 is only a snap answer in the course of evidence which does not in any way help advance the defence case.

21. The eye-witnesses P.W.1, P.W.3 and P.W.4 have spoken to the sequence of events which led to the commission of the crime by the accused, though P.W.2 has been treated as hostile witness and crossexamined by the prosecution. She would state that both the accused and his wife were present in the place of occurrence and on hearing the noise from P.W.1, she and other people who were sleeping at that time woke up and learnt that the accused had cut the deceased with aruval. She would also empathetically say about the presence of electric light which had thrown sufficient light to witness the occurrence and to this limited extent, her evidence, though she turned hostile, may be relied upon to corroborate the evidence of P.W.1.

22. An overall view of the evidence of eye-witnesses in this case coupled with the medical evidence would indicate that the prosecution has succeeded in establishing the guilt of the accused beyond reasonable doubt. The learned Sessions Judge has therefore in appreciation of the entire evidence both oral and documentary let in by the prosecution has come to the

correct conclusion that the appellant had in fact committed the offence of murder and therefore the judgment of conviction and sentence passed by the Court below has to be sustained.

23. For the reasons stated above, this Criminal Appeal does not merit acceptance, but only becomes liable to be dismissed and is dismissed accordingly.

Index : Yes
Website: Yes
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To

1. The Addl. Sessions Judge-cum-Chief Judicial Magistrate,
Salem
2. -do- through the Principal Sessions Judge, Salem.
3. The Inspector of Police, Thiruchengodu Police Station,
Salem District.
4. The Superintendent, Central Prison, Coimbatore
5. The District Collector, Salem.
6. The Director General of Police, Chennai.

7. The Public Prosecutor, High Court, Chennai.